

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART, CONCURRING IN PART, AND DISSENTING IN PART**

Re: *Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration*, WC Docket No. 07-149; *Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration, and to End the NAPM LLC's Interim Role in Number Portability Administration Contract Management*, WC Docket No. 09-109; *Telephone Number Portability*, CC Docket No. 95-116.

Last year, when the Commission conditionally selected Telcordia as the next Local Number Portability Administrator (LNPA), the order stated that the Commission was “establish[ing] a transparent process and schedule to ensure the effective, seamless, and timely transition of the LNPA.” Unfortunately, this proceeding has not lived up to any of those adjectives. Once again, the Commission is picking up the pieces of a flawed process in the hopes that at least some of the promised savings will materialize over time. This is troubling because I actually find the potential significant savings from the new contract to be very beneficial to those that use these services.

In my statement last year, I made clear that the process leading up to the selection order left much to be desired and that a “significant amount of information—more than was probably necessary or justifiable—has been cloaked behind protective orders.” I had also requested greater Commission oversight to help ensure that “any further concerns by carriers or other parties about the transition, contract terms, or associated costs receive sufficient attention.” My objective in flagging these issues was to encourage a more open and transparent process going forward. In other words, fix the process mistakes of the past.

Instead, it quickly became apparent that very little was going to change. We were not informed of key developments in a timely manner and, once again, we were presented with a fully cooked order and told that we needed to vote it quickly. The clear message was that we were supposed to review the contract, but that we shouldn't look too hard because time was of the essence and any suggested changes would require further negotiations, meaning forget it. For instance, when I asked about provisions concerning ownership in a telecommunications service provider and the treatment of VoIP, my questions were brushed aside. The responses always boiled down to some combination of that's how it has been done before and this isn't the Commission's contract. In this order, however, the Commission is “approving” the contract, which includes the specific terms. That's a very different exercise and, in the end, I am unable to endorse every clause of the contract.

If it were going to be problematic for Commissioners to question specific terms, then the solution would have been for the full Commission to be brought in at an earlier stage. Or the entire process should have been set up differently from the start. Is this a private contract or not? Either the Commission is actively involved, and the process is treated like a government procurement with much greater transparency, or the Commission is not involved except to review for consistency with the Act. Asking Commissioners to “approve” a contract with little to no input is trying to have it both ways. That's untenable.

Perhaps that is why all future outreach and oversight, including the authority to approve material contract changes, is being delegated to various Bureaus and Offices. That is not a satisfactory solution either. The full Commission was brought in to solve problems that had arisen earlier in the process, so I am concerned that returning the locus of the proceeding to the Bureaus and the North American Portability Management LLC (NAPM) will result in less transparency and could create new problems.

I am also concerned that too much information was withheld from certain participants for too long. In particular, while the NAPM and Telcordia ultimately re-filed the contract with significantly fewer redactions, enabling more people to review it than before, there was clearly no reason to shield all

of that information upfront. Moreover, once representatives that had access to the documents voiced concerns, including some of the same points I flagged, they too were ignored. To be clear, I do not agree with each and every issue that was raised. But the unnecessary withholding of information and the dismissive attitude towards concerns raised in the record are further examples of the lack of forethought and attention given to matters of process that have plagued this proceeding.

Based on my concerns about certain language in the contract and order, due to my continued misgivings regarding process, and given the substantial delegations of authority, I must concur in part and dissent in part. At the same time, it is likely that, notwithstanding the delays, there will still be savings for carriers, and ultimately consumers. Further, we are affirming the principle that competition among providers to offer these services is warranted and necessary. It is the prospect of savings, even if diminished, and the benefits of contract competition, which the Commission should use elsewhere, that enables me to approve in part.